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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/798,442	03/12/2004	Rainer Muller	5725.0864-01	5278

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EXAMINER

VENKAT, JYOTHSNA A

ART UNIT	PAPER NUMBER
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1615

DATE MAILED: 06/16/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	Application N . 10/798,442	Applicant(s) MULLER ET AL.	
	Examin r JYOTHSNA A. VENKAT Ph. D	Art Unit 1615	

--The MAILING DATE of this communication appears n the c ver sheet with the correspondence address --

THE REPLY FILED 02 June 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
 b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).


4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: _____.
 Claim(s) objected to: _____.
 Claim(s) rejected: 19-23 and 31-40.
 Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
 12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s).
 13. ☐ Other: _____.


 JYOTHSNA A. VENKAT Ph. D
 Primary Examiner
 Art Unit: 1615

Continuation of 11. does NOT place the application in condition for allowance because: the recitation of " liquid" before detergent and conditioning compositions is new matter. Applicants argue that the support in the specification for " more or less thickened liquids" is support for " liquids" since one of ordinary skill in the art would reasonably conclude that applicants had possession of the "liquid detergents and cosmetic hair composition". In resposne to the above argument the specification did not define the meaning for " more or less thickened liquids" . Liquid is easily flowing where as thickened liquids are not easily flowable like liquids. therefore " liquid" is new matter. Lotion can be construed as thickened liquid and based upon this the claims were reejected under 102(b).

102(b) rejection: Applicants argue that patent '763 is drawn to skin preparation that is resistant to being removed when the skin is washed, where as the claimed compositions are to liquid detergent and conditioning cosmetic hair compositions to be removed by washing and example II pointed to by the examiner are directed to skin preparations where as the instant claims are drawn to hair compositions and examiner has failed to show that the patent teaches or suggests every limitations of the claims. In resposne to the above argument, the claims are drawn to compositions and not to method of using the compositions(emphasis added). " Products of identical chemical compositions can not have mutually exclusive properties". A chemical compound and its properties are inseparable. Therefore, if the prior art teaches the identical compositions, the properties applicant discloses / and or claims are necessarily present. In re Spada 15 USPQ 2d, 1655,1658. Therefore example II anticipates claims 19-23 and 31-38.

103 rejection: Applicants argue that one of ordinary skill in the art would not be motivated to modify the skin skin preparation of patent '763, which is expressly taught to be wash-resitant so as to incorporate an amount of cleansing surfactant that is disclosed be suitable for use as a shampoo taught by patent '286. In response to the above argument, patent '286 is relied for the limitations of claims 39-40, which is with respect to concentration of surfactants. Patent '763 teaches wash-off skin preparations along with cationic and non-ionic surfactant. Table I teaches cetereath-20, which is non-ionic surfactant and distearyl dimethylammonium chloride which is cationic. The compositions have low amounts of non-ionic surfactants. Patent '763 is drawn to skin preparations which are resistant to soap and water. Soap is anionic surfactant. Therefore the skin preparation of '763 are resistant to anionic surfactant. The claims of the instant application are not limited to detergent base, which is only anionic. One of ordinary skill in the art would be motivated to prepare compositions using the emollient isostearyl neopentanoate and add surfactant in higher amounts so that higher amounts of surfactant help in cleansing and emollient helps in providing moisturizing properties.